

Notice of Allowability

Application No.

09/834,700

Examiner

Jeanine A Goldberg

Applicant(s)

BRAUN, ANDREAS

Art Unit

1634

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to 12/21/04.
2. ☒ The allowed claim(s) is/are 1-5, 19, 20, 45, 46 and 76-81.
3. ☐ The drawings filed on _____ are accepted by the Examiner.
4. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) ☐ All b) ☐ Some* c) ☐ None of the:
 1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

* Certified copies not received: _____.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.

5. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
 6. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
 - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
 - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date _____.
 - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date _____.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
7. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

1. ☐ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3. ☐ Information Disclosure Statements (PTO-1449 or PTO/SB/08), Paper No./Mail Date _____
4. ☐ Examiner's Comment Regarding Requirement for Deposit of Biological Material
5. ☐ Notice of Informal Patent Application (PTO-152)
6. ☐ Interview Summary (PTO-413), Paper No./Mail Date _____
7. ☒ Examiner's Amendment/Comment
8. ☒ Examiner's Statement of Reasons for Allowance
9. ☐ Other _____

Jeanine A. Goldberg

JEANINE A. GOLDBERG
PATENT EXAMINER

EXAMINER'S AMENDMENT

1. An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.
2. Authorization for this examiner's amendment was given in a telephone interview with Bruce Grant on January 19, 2005.
3. The application has been amended as follows:
 - A) Claims 82-83 have been cancelled without prejudice or disclaimer.
 - B) Claim 1 has been amended to delete "as set forth in" and replace therefore - - of - -.
 - C) Claim 76 has been amended to recite - - The isolated nucleic acid molecule of Claim 1, which consists essentially of the sequence of nucleotides that encodes the polypeptide of SEQ ID NO: 2. - -
 - D) Claim 79 has been amended to recite - - The isolated nucleic acid molecule of Claim 1, which consists of the sequence of nucleotides that encodes the polypeptide of SEQ ID NO: 2. - -
4. The following is an examiner's statement of reasons for allowance.

The claims are drawn to an isolated nucleic acid molecule comprising a sequence of nucleotides that encodes the polypeptide of SEQ ID NO: 2, except that Ile

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residue at 646 of SEQ ID NO: 2 is replaced with Val, Leu or Phe. The claims are drawn to an isolated nucleic acid molecule comprising nucleotides 138-2126 of SEQ ID NO: 1 with a G, T or C at position 2073. The prior art does not teach a sequence encoding SEQ ID NO: 2 except for at position 646 of SEQ ID NO: 2 is replaced with Val, Leu, or Phe. The prior art also does not teach a nucleic acid comprising 138- 2126 of SEQ ID NO: 1 with a G, T or C at position 2073.

The response filed by the applicant on May 12, 2004 specifically points to page 48 and 49 of the 60/240,335 provisional application, incorporated by reference in the instant specification to support that the nucleic acid of AKAP10-5 variant is associated with left ventricular function. The 60/240,335 provisional teaches that the variant nucleic acid is more frequent in individuals with abnormal LV ejection fraction. LV ejection fraction is a strong predictor of cardiovascular mortality. Further, the 60/240,335 provisional teaches that the variant is associated the cardiovascular disease in men over the age of 50. Thus, the nucleic acid would be useful for predicting LV ejection fraction or cardiovascular disease in men over the age of 50.

5. Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

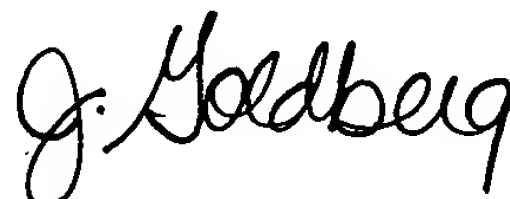
6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to examiner Jeanine Goldberg whose telephone number is (571) 272-0743. The examiner can normally be reached Monday-Friday from 7:00 a.m. to 4:00 p.m.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gary Jones, can be reached on (571) 272- 0745.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

The Central Fax Number for official correspondence is (571) 273-8300.



Jeanine Goldberg

Patent Examiner

January 21, 2005